

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/012,272 01/23/98 LEE

S 028870-080

021839 HM12/1122
BURNS DOANE SWECKER & MATHIS L L P
POST OFFICE BOX 1404
ALEXANDRIA VA 22313-1404

EXAMINER

PAK, J

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

11/22/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	09/012272	Applicant(s)	Lee et al
Examiner	PAK, J.	Group Art Unit	1616

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 3/3/00 and 8/4/00.
 This action is FINAL.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-4, 6 and 8-9 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
 Claim(s) _____ is/are allowed.
 Claim(s) 1-4, 6 and 8-9 is/are rejected.
 Claim(s) _____ is/are objected to.
 Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - All
 - Some*
 - None of the CERTIFIED copies of the priority documents have been
 - received.
 - received in Application No. (Series Code/Serial Number) _____.
 - received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 13 Interview Summary, PTO-413
 Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152
 Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

Art Unit: 1616

Claims 1-4, 6 and 8-9 are pending in this application. Applicant is requested to update the status of any co-pending applications and file terminal disclaimers to expedite prosecution, if appropriate.

Claim 6 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 still is not clear as to what kind of percentages are being used there. It is recognized that independent claim 1 uses percents by weight, but claim 6 should again recite the percentage type that is intended. Additionally, claim 6 should be amended to depend from a pending claim.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonfield et al. in view of Shimono et al. for the reasons of record.

Applicant's amendments and arguments relative hereto have been given due consideration, but were deemed unpersuasive. With respect to the amendment that the glass particles are now required to be a size range less than about 90 microns, Bonfield et al. suggests the same -- see column 4. Bonfield et al. teach ground glass particles, size ranging from 1.5 to 150 microns

Art Unit: 1616

(column 3, lines 52-53; column 4, lines 10-14), with an average size of 45.7 micron for 45S5 BIOGLASS®. With respect to applicant's arguments, it must be noted again that applicant still argues as if the claims do not read on incorporation of other anti-inflammatory agents. But see claim 4, where it is clear that claim 1 is readable on incorporation of anti-inflammatory agents. The Examiner's position has been based on such interpretation of the claims, and to the extent that the claims are so readable, the position of record must be maintained.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or (703) 305-3592.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Examiner Pak whose telephone number is (703) 308-4538. The Examiner can normally be reached on Monday through Thursday from 8:00 AM to 5:30 PM. The Examiner can also be reached on alternate Fridays.

Art Unit: 1616

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. José Dees, can be reached on (703) 308-4628.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.



JOHN PAK
PRIMARY EXAMINER
GROUP 1200